

Decision **DRAFT DECISION OF ALJ DUDA** (Mailed 1/28/2003)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish A Framework for Network Architecture Development of Dominant Carrier Networks.

Rulemaking 93-04-003
(Filed April 7, 1993)

Investigation on the Commission's Own Motion into Open Access and Network Architecture Development of Dominant Carrier Networks.

Investigation 93-04-002
(Filed April 7, 1993)

**OPINION SUSPENDING FOR ONE YEAR THE ANNUAL NOMINATION
PROCEDURE ESTABLISHED IN DECISION 99-11-050**

In Decision (D.) 99-11-050, the Commission set unbundled network element (UNE) rates for Pacific Bell Telephone Company (Pacific, also known by its new business name of SBC). Also in that decision, the Commission established a procedure by which Pacific, or carriers with which Pacific has entered into interconnection agreements, could annually nominate UNEs for reexamination of the adopted rate. (*See* D.99-11-050, *mimeo.* at 271, 272.)

In 2001, the Commission accepted nominations to review the rates for Pacific's loop and switching UNEs.¹ In 2002, the Commission accepted

¹ See R.93-04-003/I.93-04-002/A.01-02-024 and related cases, *Assigned Commissioner and Administrative Law Judge's Ruling Denying Motion to Abey Cost Reexamination and Setting Scope for UNE Cost Reexamination Proceeding*, June 14, 2001.

nominations to review Pacific's DS-3 loops, the DS-3 entrance facility without equipment, Dedicated Transport, and SS7 Links.² The nominations from 2002 were consolidated with the ongoing review of loops and switching initiated in 2001, and this proceeding is currently pending. (*See Application (A.) 01-02-024 and consolidated applications, commonly known as the "2001/2002 UNE Reexamination."*)

Under the current schedule for the 2001/2002 UNE Reexamination, parties filed cost studies for the UNEs under review on October 18, 2002. Comments on these cost studies shall be filed in February and March 2003, and, depending on whether hearings are required, a draft decision is expected to issue in the summer or fall of 2003.³

Given that the parties' and Commission's resources are significantly occupied with review of Pacific's UNEs in the 2001/2002 UNE Reexamination, we will suspend the nomination mechanism established in D.99-11-050 for one year. That is, we will not accept any new nominations to review Pacific's UNE rates for 2003 since we have not yet concluded review of rates we agreed to reexamine in 2001 and 2002. Absent a further suspension order, in 2004, parties may once again nominate UNEs for review between February 1 and March 1, 2004 using the mechanism set forth in D.99-11-050.

² See A.01-02-024 and consolidated applications, *Scoping Memo for Consolidated 2001/2002 UNE Reexamination*, June 12, 2002.

³ The current schedule for the 2001/2002 UNE Reexamination is set forth in a January 6, 2003 ruling in A.01-02-024.

Comments on Draft Decision

Pursuant to Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Commission's Rules of Practice and Procedure, the draft decision in this matter was mailed to the parties in the Open Access and Network Architecture

Development Rulemaking and Investigation (R.93-04-003/I.93-04-002, or “OANAD”) and to the service list for the 2001/2003 UNE Reexamination Proceeding. AT&T Communications of California and WorldCom, Inc. filed comments in support of the draft.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Dorothy Duda is the assigned Administrative Law Judge in the OANAD proceeding.

Findings of Fact

1. D.99-11-050 established a procedure for Pacific or carriers with which Pacific has interconnection agreements to annually nominate UNEs for review of Pacific’s adopted UNE rates.
2. The schedule for the current 2001/2002 UNE Reexamination proceeding calls for a draft decision by summer or fall of 2003, depending on whether hearings are held.

Conclusions of Law

1. The Commission should suspend for one year the annual nomination procedure set forth in Ordering Paragraph 11 of D.99-11-050 to allow parties and staff to complete the current 2001/2002 UNE Reexamination case.
2. The annual nomination procedure should resume in 2004, unless modified by further order of the Commission.

O R D E R

IT IS ORDERED that:

1. The annual nomination procedure set forth in Ordering Paragraph 11 of Decision 99-11-050 is suspended for one year.
2. Pacific Bell Telephone Company (Pacific) or carriers with which Pacific has interconnection agreements, may once again file nominations of UNEs for

review, as described in Ordering Paragraph 11 of D.99-11-050, between February 1 and March 1, 2004.

3. This decision should be mailed to the service list for Rulemaking 93-04-003/Investigation 93-04-002 (OANAD proceeding), and the service list for the 2001/2002 UNE Reexamination Proceeding (A.01-02-024 and consolidated cases).

This order is effective today.

Dated _____, at San Francisco, California.